

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101**

IN THE MATTER OF:

THE OESER COMPANY

EPA ID # WAD 00895 7243

Respondent

Proceeding pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) & (g).

COMPLAINT AND COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING

EPA Docket No. RCRA-10-2003-0151

I. PRELIMINARY STATEMENT

1.1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) demanding civil penalties and requiring compliance as specified in Sections III and IV of this document, is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, (“RCRA”), 42 U.S.C. § 6928(a) & (g). In addition, the Complaint is issued in accordance with the United States Environmental Protection Agency’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, found at 40 C.F.R. Part 22, a copy of which is attached hereto. The Complainant is the Director of the Office of Waste and Chemicals Management, EPA, Region 10. The Respondent is The Oeser Company located in Bellingham, Washington (“Respondent”).

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of

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1 Washington has been granted final authorization to administer and enforce a hazardous
2 waste program. The Washington Revised Statutes provide authority for the Washington
3 State Dangerous Waste Regulations, Chapter 173-303, which include the regulations that
4 are part of the state program authorized pursuant to Section 3006 of RCRA, 42 U.S.C.
5 § 6926.

6 1.3. When the United States Environmental Protection Agency ("EPA")
7 determines that any person is in violation of Subtitle C of RCRA, including any violation
8 of an authorized state program, EPA may, pursuant to Section 3008(a) of RCRA, 42
9 U.S.C. § 6928(a), issue an order assessing a civil penalty for any past or current violation
10 of RCRA, and require compliance with Subtitle C immediately or within a specified time
11 period or both. In the case of a violation in a state that is authorized to carry out a
12 hazardous waste program, EPA shall notify the state in which such violation has occurred
13 prior to issuing an order. The State of Washington has been notified of this action in
14 accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

15 1.4. As a result of RCRA inspections conducted by duly authorized
16 representatives of the EPA, and other information available to EPA, Complainant has
17 determined that Respondent violated certain regulations as set forth below.

18 19 **II. ALLEGATIONS**

20 **ALLEGATIONS COMMON TO ALL COUNTS**

21 2.1. Respondent is a corporation organized and existing in the State of
22 Washington, and is a "person" within the meaning of Section 1004(15) of RCRA, 42
23 U.S.C. § 6903(15).

24 2.2. Respondent owns and operates a facility at 730 Marine Drive, Bellingham,

1 Washington ("Facility").

2 2.3. Respondent generates and accumulates "hazardous wastes" as defined in
3 Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and "dangerous wastes" as defined in the
4 Washington Administrative Code (WAC) Chapter 173-303-040 at the Facility from
5 wood-treating operations that are subject to RCRA and WAC Chapter 173-303.

6 2.4. Specific dangerous wastes generated by Respondent include listed dangerous
7 wastes F032 and K001 set forth in WAC 173-303-9904.

8 2.5. Respondent is a generator as defined in WAC 173-303-040.

9 2.6. Respondent's corporate predecessor began wood-treating operations at the
10 Facility in November 1943.

11 2.7. On or about August 18, 1980, Respondent submitted a "Notification of
12 Hazardous Waste Activity" (EPA Form 8700-12), for the generation and handling of
13 hazardous wastes at the Facility.

14 2.8. On or about November 18, 1980, pursuant to 40 C.F.R. Part 270, Respondent
15 submitted a "Part A" RCRA permit application to store hazardous waste in tanks.

16 2.9. Respondent requested that the Part A RCRA permit application be withdrawn
17 on April 28, 1982.

18 2.10. Respondent operates two wood-treating processes - a retort in which wood
19 is pressure treated and an open-topped dip tank (the butt tank) that is used to thermally
20 treat one end of poles of wood.

21 2.11. Respondent treats wood with a wood-treating solution that contains
22 approximately 5% pentachlorophenol in an oil base.

23 2.12. Respondent has three drip pads, a drip pad directly outside of the retort ("the
24 Retort Drip Pad"), a drip pad that is adjacent to the northern side of the retort ("the North
25

1 Drip Pad”), and a drip pad to the south of the area in which wood-treating occurs (“the
2 South Drip Pad”).

3 2.13. Wood poles that are treated in the retort are placed on trams that are pushed
4 into and pulled out of the retort on rail tracks by a small train engine called a Dinkie.

5 2.14. Metal cables that attach the trams to the Dinkie pull the trams out of the
6 retort.

7 2.15. The Dinkie moves treated wood on the trams from the retort and Retort Drip
8 Pad to the North Drip Pad by backing away from the Retort Drip Pad to the point where it
9 can switch to another track that leads to the North Drip Pad and there the Dinkie pushes
10 the treated wood on trams forward to the North Drip Pad.

11 2.16. After treatment, wood treated in the butt tank is moved to the South Drip
12 Pad.

13 2.17. The allegations of RCRA violations set forth in this Complaint arise from
14 Compliance Evaluation Inspections of the Facility conducted by EPA on or about
15 September 26, 2000, August 20-21, 2001, and September 18, 2002, including the review
16 of records following each inspection; and review of Respondent’s response to EPA’s
17 information request.

18 2.18. During the 2000 inspection, preservative drippage from treated wood (F032
19 listed dangerous waste) was on the ground throughout those areas of the Respondent’s
20 Facility where treated wood is transported and/or stored after being treated.

21 2.19. During the 2001 inspection, preservative drippage from treated wood (F032
22 listed dangerous waste) was on the ground throughout those areas of the Respondent’s
23 Facility where treated wood is transported and/or stored after being treated.

24 2.20. The analytical results of samples collected on or about August 21, 2001,
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1 from areas where preservative drippage had stained the ground at Respondent's Facility
2 showed the stains contained pentachlorophenol.

3 2.21. During the 2002 inspection, preservative drippage from treated wood (F032
4 listed dangerous waste) was on the ground throughout those areas of the Respondent's
5 Facility where treated wood is transported and/or stored after being treated.

6 2.22. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), this Complaint does not
7 include a specific penalty demand for the violations alleged. Pursuant to Sections
8 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) & (g), EPA must, in determining the
9 specific penalty to be assessed in this matter, take into account the seriousness of the
10 violation and any good faith efforts to comply with the applicable requirements.

11 **COUNT I: FAILURE TO MAKE A DANGEROUS WASTE DETERMINATION**

12 2.23. The allegations of paragraphs 2.1 through 2.22 are incorporated herein by
13 reference.

14 2.24. The regulation at WAC 173-303-070 requires that any person who generates
15 a solid waste determine if that waste is a dangerous waste using the procedure described
16 in WAC 173-303-070(3).

17 2.25. At the time of the 2000 inspection, Respondent had at its Facility two (2)
18 blue, five (5) gallon plastic buckets that were located adjacent to the south-eastern side of
19 the North Drip Pad and were filled with pieces of wood and other solid waste collected
20 from the Retort and North Drip Pads.

21 2.26. The solid waste collected from the drip pads included wood-treating process
22 residuals and preservative drippage which are F032 listed dangerous waste.

23 2.27. The two (2) blue, five (5) gallon plastic buckets that were located adjacent
24 to the south-eastern side of the North Drip Pad contained listed dangerous waste (F032).

1 2.28. The two (2) five (5) gallon plastic buckets were not labeled or otherwise
2 managed as a dangerous waste.

3 2.29. At or before the time of the 2000 inspection, Respondent had failed to
4 perform a dangerous waste determination, as required by WAC 173-303-070, on the solid
5 waste in two (2) five (5) gallon plastic buckets located adjacent to the south-eastern side
6 of the North Drip Pad.

7 2.30. At the time of the 2000 inspection, Respondent had in its storage building
8 one (1) large dumpster that contained pieces of wood and other solid waste collected from
9 throughout the Facility.

10 2.31. The contents of the large dumpster included wood treatment process
11 residuals and preservative drippage which are listed dangerous waste (F032).

12 2.32. The large dumpster was not labeled or otherwise managed as a dangerous
13 waste.

14 2.33. At or before the time of the 2000 inspection, Respondent had failed to
15 perform a dangerous waste determination, as required by WAC 173-303-070, on the solid
16 waste contained in the large dumpster that included wood treatment process residuals and
17 preservative drippage.

18 2.34. At the time of the 2000 inspection, Respondent had at its Facility eight (8)
19 fifty-five (55) gallon drums and seven (7) "penta" bags (the containers in which the
20 pentachlorophenol product is delivered to the facility) that contained pieces of wood and
21 other solid waste including wood treatment preservative drippage (F032 listed dangerous
22 waste) that Respondent had swept up from throughout the Facility including the treated
23 wood storage yard.

24 2.35. Preservative drippage from treated wood in the treated wood storage yard is
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1 F032 listed dangerous waste.

2 2.36. The solid waste in the eight (8) fifty-five (55) gallon drums and seven (7)
3 “penta” bags had been generated over the previous two years.

4 2.37. The eight (8) fifty-five (55) gallon drums and seven (7) “penta” bags
5 contained F032 listed dangerous waste.

6 2.38. Six (6) of the eight (8) fifty-five (55) gallon drums and seven (7) “penta”
7 bags were not labeled or otherwise managed as a dangerous waste.

8 2.39. At or before the 2000 inspection, Respondent had failed to perform a
9 dangerous waste determination upon solid waste as it was generated as required by WAC
10 173-303-070, on the contents of six (6) of the eight (8) fifty-five (55) gallon drums and
11 seven (7) “penta” bags.

12 2.40. At the time of the 2002 inspection, there was one (1) “penta” bag in front of
13 the storage building under a wooden funnel-like contraption that contained waste that
14 included or was mixed with preservative drippage (F032 listed dangerous waste) from
15 cleaning the treated wood storage yard.

16 2.41. The “penta” bag in front of the storage building contained listed dangerous
17 waste F032.

18 2.42. The “penta” bag in front of the storage building was not labeled or otherwise
19 managed as a dangerous waste.

20 2.43. At or before the time of the 2002 inspection, Respondent had failed to
21 perform a dangerous waste determination on the contents of the “penta” bag in front of the
22 storage building as required by WAC 173-303-070.

23 2.44. At the time of the 2002 inspection, there were several “penta” bags located
24 inside the storage building that contained waste that included or was mixed with

1 preservative drippage (F032 listed dangerous waste) from cleaning the treated wood
2 storage yard.

3 2.45. The several “penta” bags located inside the storage building contained listed
4 dangerous waste F032.

5 2.46. The several “penta” bags inside the storage building were not labeled or
6 otherwise managed as a dangerous waste.

7 2.47. At or before the time of the 2002 inspection, Respondent had failed to make
8 a dangerous waste determination regarding the contents of the several “penta” bags
9 located inside the storage building as required by WAC 173-303-070.

10 2.48. Respondent has failed to make a dangerous waste determination on a
11 significant amount of listed F032 dangerous waste. By failing to make the determination
12 that its waste is F032 dangerous waste as required, Respondent also failed to manage the
13 waste as dangerous waste in accordance with the dangerous waste requirements.
14 Therefore, substantial potential for harm to human health and the environment exists.
15 Failing to conduct the required dangerous waste determination represents substantial harm
16 to the dangerous waste program as this is a fundamental requirement which triggers the
17 regulatory process that ensures the proper management of dangerous waste to prevent
18 releases to the environment and human exposure. Respondent’s failure to make a
19 dangerous waste determination upon first generating the F032 listed dangerous waste was
20 a substantial deviation from the requirements. Pursuant to Section 3008(a)(3) and (g) of
21 RCRA, 42 U.S.C. § 6925(a)(3) & (g), as specified in Paragraph 3.1 below, Complainant
22 requests that a penalty of up to \$27,500 be assessed for this violation.

1 **COUNT II: FAILURE TO OFFER DANGEROUS WASTE TO A**
2 **TREATMENT, STORAGE OR DISPOSAL FACILITY**
3 **THAT HAS A PERMIT OR INTERIM STATUS**

4 2.49. The allegations of paragraphs 2.1 through 2.48 are incorporated herein by
5 reference.

6 2.50. The regulation at WAC 173-303-141 provides that a person may offer
7 dangerous waste only to a treatment, storage or disposal facility that has a permit or, if the
8 facility is not in Washington, interim status.

9 2.51. Respondent routinely commingled waste from throughout its Facility.

10 2.52. These commingled wastes included waste collected from Respondent's drip
11 pads which includes or is mixed with F032 listed dangerous waste.

12 2.53. These commingled wastes also included waste collected from Respondent's
13 treated wood storage yard which includes preservative drippage which is also F032 listed
14 dangerous waste.

15 2.54. Since at least 1996 until at least the time of the 2002 inspection, Respondent
16 sent 375 tons of waste to the Columbia Ridge Landfill and Recycling Center near
17 Arlington, Oregon.

18 2.55. Eleven shipments of waste sent to the Columbia Ridge Landfill and
19 Recycling Center from at least 1996 until at least 2002 included dangerous waste.

20 2.56. The Columbia Ridge Landfill and Recycling Center does not have a permit
21 nor interim status for treatment, storage or disposal of dangerous waste.

22 2.57. Respondent offered F032 listed dangerous waste to a facility that did not
23 have a permit or interim status for treatment, storage or disposal of dangerous waste in
24 violation of WAC 173-303-141.

25 2.58. By failing to offer its F032 listed dangerous waste to a treatment, storage or
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1 disposal facility that has a permit or interim status as required, Respondent created the
2 potential for substantial harm to human health and the environment. Failing to offer its
3 F032 listed dangerous waste to a permitted facility also represents substantial harm to the
4 dangerous waste program as this requirement for disposal of dangerous waste is intended
5 to ensure that disposal occurs in a manner that will protect human health and the
6 environment. By shipping its F032 listed dangerous waste to a solid waste landfill,
7 Respondent increased the risk of exposure to the dangerous waste or the release of the
8 dangerous waste into the environment. Respondent's failure to offer its F032 listed
9 dangerous waste to a permitted or interim status facility was a substantial deviation from
10 the requirements. Pursuant to Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §
11 6925(a)(3) & (g), as specified in Paragraph 3.1 below, Complainant requests that a penalty
12 of up to \$27,500 be assessed for each of the eleven (11) times that Respondent offered its
13 dangerous waste to a facility that has neither a permit nor interim status.

14 **COUNT III: STORAGE AND DISPOSAL OF DANGEROUS WASTE**
15 **WITHOUT A PERMIT OR INTERIM STATUS**

16 2.59. The allegations of paragraphs 2.1 through 2.58 are incorporated herein by
17 reference.

18 2.60. The regulation at WAC 173-303-800 and Section 3005 of RCRA, 42 U.S.C.
19 § 6925 requires the owner or operator of a dangerous waste facility that treats, stores or
20 disposes of dangerous waste to obtain a permit.

21 2.61. Respondent does not have interim status nor has it been issued a permit to
22 treat, store or dispose of dangerous waste pursuant to WAC 173-303-803(2) and 173-303-
23 806 or Section 3005 of RCRA, 42 U.S.C. § 6925.

1 **III.a. Disposal of dangerous waste without a permit or interim status**

2 2.62. Preservative drippage from treated wood is listed dangerous waste F032.

3 2.63. After treating wood, Respondent moves treated wood out of the retort onto
4 the Retort Drip Pad and then off of the Retort Drip Pad and over to the North Drip Pad.

5 2.64. At the time of the 2000 inspection, there were stains on the ground
6 throughout the Facility in areas where treated wood and equipment are moved and placed
7 indicating that preservative drippage had occurred in those locations.

8 2.65. At the time of the 2000 inspection, Respondent had moved treated wood off
9 of the Retort Drip Pad before the preservative drippage had ceased dripping.

10 2.66. At the time of the 2001 inspection, there were stains on the ground
11 throughout the Facility in areas where treated wood and equipment are moved and placed
12 indicating that preservative drippage had occurred in those locations.

13 2.67. At the time of the 2001 inspection, Respondent had moved treated wood off
14 of the Retort Drip Pad before the preservative drippage had ceased dripping.

15 2.68. At the time of the 2002 inspection, there were stains on the ground
16 throughout the Facility in areas where treated wood and equipment are moved and placed
17 indicating that preservative drippage had occurred in those locations.

18 2.69. At the time of the 2002 inspection, Respondent had moved treated wood off
19 of the Retort Drip Pad before the preservative drippage had ceased dripping.

20 2.70. At the time of the 2000, 2001 and 2002 inspections, Respondent had
21 disposed of F032 listed dangerous waste on the ground when it moved treated wood and
22 equipment from the Retort Drip Pad to other locations at its Facility.

23 2.71. At the time of the 2000, 2001 and 2002 inspections, Respondent had
24 disposed of F032 listed dangerous waste on the ground when drippage from treated wood
25

1 occurred at its Facility.

2 2.72. An owner or operator of a wood-treating facility is not required to obtain a
3 permit for incidental and infrequent drippage that occurs in its treated wood storage yard
4 so long as it complies with WAC 173-303-675(1)(c), which requires, among other things,
5 that the owner or operator maintains and complies with a written contingency plan that
6 describes how the owner or operator will respond immediately to the discharge of
7 infrequent and incidental drippage in the storage yard.

8 2.73. At the 2000 inspection, there was drippage from treated wood on the ground
9 in the storage yard.

10 2.74. At the 2001 inspection, there was drippage from treated wood on the ground
11 in the storage yard.

12 2.75. At the 2002 inspection, there was drippage from treated wood on the ground
13 in the storage yard.

14 2.76. At the 2000 inspection, Respondent did not have a written contingency plan
15 in accordance with WAC 173-303-675(1)(c).

16 2.77. At the 2001 inspection, Respondent did not have a written contingency plan
17 in accordance with WAC 173-303-675(1)(c).

18 2.78. At the time of the 2002 inspection, Respondent did not comply with its
19 contingency plan in accordance with WAC 173-303-675(1)(c).

20 2.79. At the time of the 2000, 2001 and 2002 inspections, Respondent had
21 disposed of F032 listed dangerous waste in the storage yard without a permit or interim
22 status.

1
2 **III.b. Storage and disposal of dangerous waste in a surface impoundment**
3 **without a permit or interim status**

4 2.80. At the 2000 inspection, there was a natural topographic depression and/or
5 man-made excavation formed primarily of earthen materials designed to hold an
6 accumulation of liquid dangerous wastes (a surface impoundment) in the treated wood
7 storage area of Respondent's Facility.

8 2.81. At or before the 2000 inspection, treated wood was stored such that
9 preservative drippage (F032 dangerous waste) from treated wood had fallen into this
10 surface impoundment and into water that had flowed into and was contained in this
11 surface impoundment.

12 2.82. At or before the 2000 inspection, preservative drippage and storm water that
13 contains preservative drippage collected in the surface impoundment.

14 2.83. At or before the 2001 inspection, there was a dangerous waste surface
15 impoundment in the treated wood storage area of Respondent's Facility.

16 2.84. At or before the 2001 inspection, treated wood was stored such that
17 preservative drippage from treated wood had fallen into this surface impoundment and
18 into water that had flowed into and was contained in this surface impoundment.

19 2.85. At or before the 2001 inspection, preservative drippage and storm water that
20 contains preservative drippage collected in the surface impoundment.

21 2.86. At or before the 2002 inspection, there was a dangerous waste surface
22 impoundment in the treated wood storage area of Respondent's Facility.

23 2.87. At or before the 2002 inspection, treated wood was stored such that
24 preservative drippage from treated wood had fallen into this surface impoundment and
25 into water that had flowed into and was contained in this surface impoundment.

1 2.88. At or before the 2002 inspection, preservative drippage and storm water that
2 contains preservative drippage collected in the surface impoundment.

3 2.89. At or before the time of the 2000, 2001 and 2002 inspections, Respondent
4 had stored and/or disposed of dangerous waste in a surface impoundment without a permit
5 or interim status in violation of the regulations.

6 **III.c. Failure to comply with conditions for accumulation of dangerous waste**
7 **without a permit or interim status**

8 2.90. The regulation at WAC 173-303-800 requires the owner or operator of a
9 dangerous waste facility that treats, stores or disposes of dangerous waste to obtain a
10 permit. However, WAC 173-303-200(1) states that a generator may accumulate
11 dangerous waste on-site without a permit for ninety (90) days or less, after the date of
12 generation, provided that:

13 a. the waste is placed on a drip pad and the generator complies with WAC
14 173-303-675 and maintains certain records described in WAC 173-303-200(1)(b)(iii), or

15 b. the waste is placed in containers and the generator complies with WAC
16 173-303-630(2), (3), (4), (5), (6), (8), (9), (10), and (11). Container accumulation areas
17 constructed or installed after September 30, 1986, must also comply with the provisions of
18 WAC 173-303-630(7); and

19 c. the generator otherwise complies with WAC 173-303-200.

20 2.91. At the time of the inspection noted below, Respondent failed to accumulate
21 dangerous waste in accordance with the following conditions:

22 **Storage of dangerous waste beyond ninety (90) days**

23 2.92. At the time of the 2000 inspection, there were nine (9) drums stacked in
24 three (3) tiers in the storage building that were filled with pieces of wood and other solid

1 waste collected from throughout the Facility.

2 2.93. The solid waste collected from throughout the Facility included wood-
3 treating process residuals and preservative drippage (F032 listed dangerous waste).

4 2.94. The nine (9) drums that were stacked in the storage building contained listed
5 dangerous waste (F032).

6 2.95. At the 2000 inspection, two (2) of nine (9) drums of F032 listed dangerous
7 waste stored in the storage building had been stored for more than ninety (90) days and
8 one (1) of those had been stored for more than four (4) years, the other more than one (1)
9 year, thus exceeding the allowed accumulation period under WAC 173-303-200 for
10 generators.

11 **Failure to hold treated wood on a drip pad until drippage has ceased**

12 2.96. In accordance with WAC 173-303-675(4)(k), after removing the treated
13 wood from the treatment vessel, an owner or operator must hold treated wood on a drip
14 pad until drippage has ceased.

15 2.97. At or before the time of the 2000 inspection, Respondent had moved treated
16 wood off of the Retort Drip Pad before drippage ceased.

17 2.98. At or before the time of the 2001 inspection, Respondent had moved treated
18 wood off of the Retort Drip Pad before drippage ceased.

19 2.99. At or before the time of the 2002 inspection, Respondent had moved treated
20 wood off of the Retort Drip Pad before drippage ceased.

21 2.100. At the time of the 2000 inspection, there were stains at the eastern edge of
22 the Retort Drip Pad and adjacent gravel indicating that drippage occurred as the treated
23 wood was moved from the Retort Drip Pad.

24 2.101. At the time of the 2001 inspection, there were stains at the eastern edge of
25

1 the Retort Drip Pad and adjacent gravel indicating that drippage occurred as the treated
2 wood was moved from the Retort Drip Pad.

3 2.102. At the time of the 2002 inspection, there were stains at the eastern edge of
4 the Retort Drip Pad and adjacent gravel indicating that drippage occurred as the treated
5 wood was moved from the Retort Drip Pad.

6 2.103. At or before the time of the 2000, 2001 and 2002 inspections, after
7 removing the treated wood from the treatment vessel, Respondent failed to hold treated
8 wood on a drip pad until drippage has ceased in accordance with WAC 173-303-
9 675(4)(k).

10 **Failure to maintain records sufficient to document that all treated wood**
11 **is held on a drip pad following treatment until drippage has ceased**

12 2.104. The regulation at WAC 173-303-675(4)(k) requires that an owner or
13 operator must maintain records sufficient to document that, after being removed from the
14 treatment vessel, all treated wood is held on a drip pad until drippage has ceased.

15 2.105. At the 2000 inspection, Respondent did not have documentation to show
16 that the treated wood was held on the Retort Drip Pad until drippage ceased in accordance
17 with WAC 173-303-675(4)(k).

18 2.106. At the 2001 inspection, Respondent did not have documentation to show
19 that the treated wood was held on the Retort Drip Pad until drippage ceased in accordance
20 with WAC 173-303-675(4)(k).

21 2.107. At the 2002 inspection, Respondent did not have documentation to show
22 that the treated wood was held on the Retort Drip Pad until drippage ceased in accordance
23 with WAC 173-303-675(4)(k).

24 2.108. In addition, Respondent's documentation for 1999 indicates that at least
25

1 eleven (11) times the treated wood was not held on the North Drip Pad until drippage
2 ceased in accordance with WAC 173-303-675(4)(k).

3 2.109. Respondent's documentation for 2000 indicates that at least fourteen (14)
4 times the treated wood was not held on the North Drip Pad until drippage ceased in
5 accordance with WAC 173-303-675(4)(k).

6 2.110. Respondent's documentation for 2001 indicates that at least one (1) time
7 the treated wood was not held on the North Drip Pad until drippage ceased in accordance
8 with WAC 173-303-675(4)(k).

9
10 **Failure to maintain documents related to removal of waste from drip pads
and associated collection system**

11 2.111. The regulation at WAC 173-303-200(1)(b)(iii)(A)-(B) requires a generator
12 to maintain a description of procedures that will be followed to ensure that all wastes are
13 removed from the drip pad and associated collection system at least once every ninety (90)
14 days, and document each waste removal, including the quantity of waste removed from
15 the drip pad and associated collection system, and the date and time of removal.

16 2.112. At the time of the 2000 inspection, Respondent had failed to maintain a
17 description of procedures and documentation of each waste removal in accordance with
18 WAC 173-303-200(1)(b)(iii)(A)-(B) for the South Drip Pad and the associated collection
19 system.

20 2.113. At the time of the 2001 inspection, Respondent had failed to maintain a
21 description of procedures and documentation of each waste removal in accordance with
22 WAC 173-303-200(1)(b)(iii)(A)-(B) for the South Drip Pad and the associated collection
23 system.

24 2.114. At the time of the 2002 inspection, Respondent had failed to maintain a
25

1 description of procedures and documentation of each waste removal in accordance with
2 WAC 173-303-200(1)(b)(iii)(A)-(B) for the South Drip Pad and the associated collection
3 system.

4 2.115. At the time of the 2000 inspection, Respondent had failed to maintain a
5 description of procedures and documentation of each waste removal in accordance with
6 WAC 173-303-200(1)(b)(iii)(A)-(B) for the Retort Drip Pad and the associated collection
7 system.

8 2.116. At the time of the 2001 inspection, Respondent had failed to maintain a
9 description of procedures and documentation of each waste removal in accordance with
10 WAC 173-303-200(1)(b)(iii)(A)-(B) for the Retort Drip Pad and the associated collection
11 system.

12 2.117. At the time of the 2002 inspection, Respondent had failed to maintain a
13 description of procedures and documentation of each waste removal in accordance with
14 WAC 173-303-200(1)(b)(iii)(A)-(B) for the Retort Drip Pad and the associated collection
15 system.

16 2.118. At the time of the 2000 inspection, Respondent had failed to maintain a
17 description of procedures and documentation of each waste removal in accordance with
18 WAC 173-303-200(1)(b)(iii)(A)-(B) for the North Drip Pad and the associated collection
19 system.

20 2.119. At the time of the 2001 inspection, Respondent had failed to maintain a
21 description of procedures and documentation of each waste removal in accordance with
22 WAC 173-303-200(1)(b)(iii)(A)-(B) for the North Drip Pad and the associated collection
23 system.

24 2.120. At the time of the 2002 inspection, Respondent had failed to maintain a
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1 description of procedures and documentation of each waste removal in accordance with
2 WAC 173-303-200(1)(b)(iii)(A)-(B) for the North Drip Pad and the associated collection
3 system.

4 **Failure to have a curb or berm around the perimeter of the drip pad**

5 2.121. The regulation at WAC 173-303-675(4)(a)(iii) requires that a drip pad have
6 a curb or berm around the perimeter of the drip pad.

7 2.122. At the time of the 2000 inspection, there was no curb or berm on the south,
8 east or west sides of the South Drip Pad.

9 2.123. At the time of the 2001 inspection, there was no curb or berm on the south,
10 east or west sides of the South Drip Pad.

11 2.124. At the time of the 2002 inspection, there was no curb or berm on the south,
12 east or west sides of the South Drip Pad.

13 2.125. From at least the time of the 2000 inspection until the 2002 inspection, the
14 South Drip Pad did not have a curb or berm around the perimeter in accordance with
15 WAC 173-303-675(4)(a)(iii).

16 2.126. At the time of the 2000 inspection, there was no curb or berm at the eastern
17 end of the Retort Drip Pad.

18 2.127. At the time of the 2001 inspection, there was no curb or berm at the eastern
19 end of the Retort Drip Pad.

20 2.128. At the time of the 2002 inspection, there was no curb or berm at the eastern
21 end of the Retort Drip Pad.

22 2.129. From at least the time of the 2000 inspection until the 2002 inspection, the
23 Retort Drip Pad did not have a curb or berm around the perimeter in accordance with
24 WAC 173-303-675(4)(a)(iii).

1 2.130. At the time of the 2000 inspection, there was no curb or berm at either the
2 east or west ends of the North Drip Pad.

3 2.131. At the time of the 2001 inspection, there was no curb or berm at the east
4 end of the North Drip Pad.

5 2.132. At the time of the 2002 inspection, there was no curb or berm at the east
6 end of the North Drip Pad.

7 2.133. From at least the time of the 2000 inspection until the 2002 inspection, the
8 North Drip Pad did not have a curb or berm around the perimeter in accordance with
9 WAC 173-303-675(4)(a)(iii).

10 **Failure to minimize tracking of hazardous waste or hazardous constituents**
11 **off the drip pad**

12 2.134. The regulation at WAC 173-303-675(4)(j) requires that drip pads be
13 operated and maintained in a manner to minimize tracking of hazardous waste or
14 hazardous waste constituents by personnel or equipment.

15 2.135. At the time of the 2000 inspection, workers walked onto and off of the
16 Retort Drip Pad tracking preservative drippage (F032 dangerous waste) off of the Retort
17 Drip Pad.

18 2.136. At the 2000 inspection, there were tire track marks on the asphalt leading
19 off of both the south and north sides of the Retort Drip Pad consistent with equipment
20 driving on to and off of the Retort Drip Pad.

21 2.137. At or before the time of the 2000 inspection, the Dinkie (small engine),
22 trams and cables used to move wood on to and off of the Retort Drip Pad had been moved
23 off the drip pad tracking preservative drippage off of the Retort Drip Pad.

24 2.138. At or before the time of the 2000 inspection, Respondent's operation of
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1 both the trams and the Dinkie had tracked preservative drippage off of the Retort Drip
2 Pad.

3 2.139. At the 2000 inspection, a large brown stain of preservative drippage was
4 observed about twenty (20) feet from the end of the Retort Drip Pad in the gravel between
5 the rail tracks.

6 2.140. At the 2000 inspection, there were stains of preservative drippage on the
7 ground that began on the eastern end of the Retort Drip Pad and extended into the gravel
8 off of the Retort Drip Pad.

9 2.141. At the time of the 2001 inspection, workers walked onto and off of the
10 Retort Drip Pad tracking preservative drippage (F032 dangerous waste) off of the Retort
11 Drip Pad.

12 2.142. At or before the 2001 inspection, the Dinkie (small engine), trams and
13 cables used to move wood on to and off of the Retort Drip Pad had been moved off the
14 drip pad tracking preservative drippage off of the Retort Drip Pad.

15 2.143. At or before the time of the 2001 inspection, Respondent's operation of
16 both the trams and the Dinkie had tracked preservative drippage off of the Retort Drip Pad

17 2.144. At the 2001 inspection, there were stains of preservative drippage on the
18 ground that began on the eastern end of the Retort Drip Pad and extended into the gravel
19 off of the Retort Drip Pad.

20 2.145. At or before the 2002 inspection, the Dinkie (small engine), trams and
21 cables used to move wood on to and off of the Retort Drip Pad had been moved off the
22 drip pad tracking preservative drippage off of the Retort Drip Pad.

23 2.146. At or before the time of the 2002 inspection, Respondent's operation of
24 both the trams and the Dinkie had tracked preservative drippage off of the Retort Drip Pad

1 2.147. At the 2002 inspection, there were stains of preservative drippage on the
2 ground that began on the eastern end of the Retort Drip Pad and extended into the gravel
3 off of the Retort Drip Pad.

4 2.148. At or before the 2000, 2001, and 2002 inspections, Respondent did not
5 operate its Retort Drip Pad in accordance with WAC 173-303-675(4)(j).

6 2.149. At or before the 2000 inspection, Respondent's regular operation of both
7 the trams and the Dinkie tracked preservative drippage off of the and the North Drip Pad.

8 2.150. At or before the 2001 inspection, Respondent's regular operation of both
9 the trams and the Dinkie tracked preservative drippage off of the and the North Drip Pad.

10 2.151. At the 2000 inspection, workers walked on to and off of the North Drip Pad
11 tracking dangerous waste.

12 2.152. At the 2001 inspection, workers walked on to and off of the North Drip Pad
13 tracking dangerous waste.

14 2.153. At or before the 2000 and 2001 inspections, Respondent did not operate its
15 North Drip Pad in accordance with WAC 173-303-675(4)(j).

16 **Failure to fulfill drip pad cleaning and inspection requirements**

17 2.154. The regulation at WAC 173-303-675(4)(i) requires that a drip pad must be
18 cleaned thoroughly in a manner and frequency such that accumulated residues of
19 hazardous waste and other materials are removed so as to allow weekly inspections of the
20 entire drip pad surface without interference or hindrance from accumulated residues of
21 hazardous waste or other materials on the drip pad.

22 2.155. The regulation at WAC 173-303-675(4)(i) requires each owner or
23 operator to document the time as well as the date of each cleaning and the cleaning
24 procedure used in the facility's operating log.

2.156. At the 2000 inspection, Respondent's records indicated that it had not cleaned the Retort Drip Pad for seventeen (17) days.

2.157. At the 2000 inspection, the groove between the tram tracks and the drip pad was obscured by accumulated residue, interfering or hindering inspection of the drip pad.

2.158. At the time of the 2000 inspection, Respondent's records indicated that the Retort Drip Pad had not been cleaned for seventeen (17) days which was insufficient to allow weekly inspection of the Retort Drip Pad without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad.

Failure to keep containers closed

2.159. The regulation at WAC 173-303-630(5)(a) requires containers of dangerous waste to be closed except when waste is being added or removed.

2.160. At the time of the 2000 inspection, Respondent had at its Facility a fifty-five (55) gallon drum that was adjacent to the south-eastern side of the North Drip Pad and was filled with pieces of wood and other solid waste collected from the Retort and North Drip Pads.

2.161. The solid waste collected from the drip pads include wood-treating process residuals and preservative drippage (F032 listed dangerous waste).

2.162. The fifty-five (55) gallon drum that was adjacent to the south-eastern side of the North Drip Pad contained listed dangerous waste (F032).

2.163. The fifty-five (55) gallon drum that contained F032 listed dangerous waste that was adjacent to the south-eastern side of the North Drip Pad was not closed in accordance with WAC 173-303- 630(5)(a), even though waste was not being added or removed.

2.164. At the 2000 inspection, the two (2) blue, five (5) gallon plastic buckets

1 containing F032 dangerous waste located next to the south-eastern side of the North Drip
2 Pad, were not closed in accordance with WAC 173-303- 630(5)(a), even though waste
3 was not being added or removed.

4 2.165. At the 2000 inspection, the three (3) top drums in the three (3)-tiered stack
5 of nine (9) drums in the storage building containing F032 listed dangerous waste were not
6 closed in accordance with WAC 173-303-630(5)(a), even though waste was not being
7 added or removed.

8 2.166. At the 2001 inspection, there was a five (5) gallon bucket next to the south-
9 eastern side of the North Drip Pad filled with pieces of wood and other solid waste
10 collected from the Retort and North Drip Pads.

11 2.167. The solid waste collected from the drip pads include wood-treating process
12 residuals and preservative drippage (F032 listed dangerous waste).

13 2.168. The five (5) gallon bucket that was next to the south-eastern side of the
14 North Drip Pad contained listed dangerous waste (F032).

15 2.169. At the 2001 inspection, the five (5) gallon bucket next to the south-eastern
16 side of the North Drip Pad that contained F032 listed dangerous waste was not closed, in
17 accordance with WAC 173-303-630(5)(a), even though waste was not being added or
18 removed.

19 **Failure to label containers with words regarding the contents**

20 2.170. The regulation at WAC 173-303-200(1)(d) require containers of dangerous
21 waste to be marked or labeled with the words “hazardous waste” or “dangerous waste” as
22 well as with the major risks associated with the waste.

23 2.171. At the 2000 inspection, the fifty-five (55) gallon drum located next to the
24 south-eastern side of the North Drip Pad containing F032 listed dangerous waste did not
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1 have the major risks associated with the waste identified on the container in accordance
2 with WAC 173-303-200(1)(d).

3 2.172. At the 2000 inspection, the two (2) blue, five (5) gallon plastic buckets
4 located next to the south-eastern side of the North Drip Pad containing F032 listed
5 dangerous waste were not marked or labeled with the words “hazardous waste” or
6 “dangerous waste” nor were the major risks associated with the waste identified on the
7 containers in accordance with WAC 173-303-200(1)(d).

8 2.173. At the 2000 inspection, there were ten (10) fifty-five (55) gallon drums of
9 evaporator sludge located on the eastern border of the Treated Pole Area.

10 2.174. Evaporator sludge from Respondent’s wood-treating process is K001 listed
11 dangerous waste.

12 2.175. The ten (10) fifty-five (55) gallon drums of evaporator sludge that
13 contained K001 listed dangerous waste were not marked or labeled with the words
14 “hazardous waste” or “dangerous waste” nor were the major risks associated with the
15 waste identified on the containers in accordance with WAC 173-303-200(1)(d).

16 2.176. At the 2000 inspection, near tram parts north of the drums of evaporator
17 sludge were eight (8) fifty-five (55) gallon drums that contained F032 listed dangerous
18 waste, six (6) of which were not marked or labeled with the words “hazardous waste” or
19 “dangerous waste” nor were the major risks associated with the waste identified on the
20 containers in accordance with WAC 173-303-200(1)(d).

21 2.177. At the 2000 inspection, near tram parts north of the drums of evaporator
22 sludge were seven (7) “penta bags” that contained F032 listed dangerous waste.

23 2.178. At the 2000 inspection, the seven (7) “penta” bags were not marked or
24 labeled with the words “hazardous waste” or “dangerous waste” nor were the major risks
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1 associated with the waste identified on the containers in accordance with WAC
2 173-303-200(1)(d).

3 2.179. At the 2000 inspection, inside the storage building was one (1) dumpster
4 that contained F032 listed dangerous waste and solid waste mixed with F032 listed
5 dangerous waste.

6 2.180. At the 2000 inspection, the dumpster was not marked or labeled with the
7 words "hazardous waste" or "dangerous waste" nor the were major risks associated with
8 the waste identified on the container in accordance with WAC 173-303-200(1)(d).

9 2.181. At the 2001 inspection, the five (5) gallon bucket located next to the south-
10 eastern side of the North Drip Pad was not marked or labeled with the words "hazardous
11 waste" or "dangerous waste" nor were the major risks associated with the waste identified
12 on the containers in accordance with WAC 173-303-200(1)(d).

13 2.182. At the 2002 inspection, the "penta bags" in the center portion of the storage
14 building and the single "penta bag" in front of the storage building were not marked or
15 labeled with the words "hazardous waste" or "dangerous waste" nor the were major risks
16 associated with the waste identified on the containers in accordance with WAC 173-303-
17 200(1)(d).

18 **Failure to keep a container inspection log**

19 2.183. The regulation at WAC 173-303-630(6) requires the owner or operator to
20 inspect, at least weekly, areas where containers of dangerous waste are stored, looking for
21 leaking containers and for deterioration of containers and the containment system caused
22 by corrosion, deterioration, or other factors.

23 2.184. The regulation at WAC 173-303-630(6) requires the owner or operator to
24 keep an inspection log including at least the date and time of the inspection, the printed
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1 name and the handwritten signature of the inspector, a notation of the observations made
2 and the date and nature of any repairs or remedial actions taken. The log must be kept at
3 the facility for at least five (5) years from the date of inspection.

4 2.185. At the 2000 inspection, although there was a document entitled "Drum
5 Storage Log" in the storage building, there were only three (3) entries dated January, 15,
6 and 22, 1997, and September 8, 1997.

7 2.186. At the 2000 inspection, the Drum Storage Log did not include the printed
8 name and handwritten signature of the inspector and did not record the type of information
9 required.

10 2.187. At or before the 2000 inspection, Respondent did not keep a container
11 inspection log that included at least the date and time of the inspection, the printed name
12 and the handwritten signature of the inspector, a notation of the observations made during
13 the weekly inspection, and the date and nature of any repairs or remedial action taken, in
14 accordance with WAC 173-303-630(6).

15 2.188. At the 2002 inspection, the drum inspection log did not include the printed
16 name and the handwritten signature of the inspector, did not record the type of
17 information required, and there were several weeks between some entries.

18 2.189. At or before the time of the 2002 inspection, Respondent did not keep a
19 container inspection log that included the printed name and the handwritten signature of
20 the inspector, a notation of the observations made during the weekly inspection, and the
21 date and nature of any repairs or remedial action taken, in accordance with WAC
22 173-303-630(6).

23 **Failure to mark containers with the date accumulation begins**

24 2.190. The regulation at WAC 173-303-200(1)(c) requires that the date upon
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1 which each period of accumulation begins is marked and clearly visible for inspection on
2 each container.

3 2.191. At the 2000 inspection, the two (2) open, blue five (5) gallon plastic
4 buckets containing F032 dangerous waste located next to the south-eastern side of the
5 North Drip Pad, were not marked with the date that accumulation of waste began, in
6 accordance with WAC 173-303-200(1)(c).

7 2.192. At the 2000 inspection, the ten (10) fifty-five (55) gallon drums of
8 evaporator sludge (K001 dangerous waste) located to the northeast of the North Drip Pad
9 were not marked with the date that accumulation of waste began in accordance with WAC
10 173-303-200(1)(c).

11 2.193. At the 2000 inspection, the seven (7) "penta bags" containing dangerous
12 waste located north of broken tram parts that were near the drums of evaporator sludge
13 were not marked with the date that accumulation of waste began in accordance with WAC
14 173-303-200(1)(c).

15 2.194. At the 2000 inspection, the eight (8) drums containing dangerous waste
16 near broken tram parts that were near the drums of evaporator sludge were not marked
17 with the date that accumulation of waste began in accordance with WAC 173-303-
18 200(1)(c).

19 2.195. At the 2000 inspection, the dumpster containing F032 dangerous waste that
20 was in the storage building was not marked with the date that accumulation of waste
21 began in accordance with WAC 173-303-200(1)(c).

22 2.196. At the 2000 inspection, the seven (7) drums containing F032 dangerous
23 waste in the north part of the storage building were not marked with the date that
24 accumulation of waste began in accordance with WAC 173-303-200(1)(c).

1 2.197. At the 2000 inspection, the “penta bags” in the center portion of the storage
2 building and the single “penta bag” in front of the storage building that contained F032
3 dangerous waste were not marked with the date that accumulation of waste began in
4 accordance with WAC 173-303-200(1)(c).

5 **Failure to maintain aisle space**

6 2.198. The regulation at WAC 173-303-630(5)(c) requires a minimum of thirty
7 (30) inches of space between containers of dangerous waste.

8 2.199. At the 2000 inspection, Respondent had not maintained sufficient aisle
9 space around the three (3)-tiered stack of nine (9) fifty-five (55) gallon drums and the
10 dumpster in the storage building in accordance with WAC 173-303-630(5)(c).

11 **Failure to comply with personnel training requirements**

12 2.200. The regulation at WAC 173-303-330 sets forth requirements for personnel
13 training.

14 2.201. At the time of the 2000, 2001, and 2002 inspections, Respondent had not
15 complied with the personnel training requirements in accordance with WAC 173-303-330.

16 **Failure to comply with contingency plan and emergency procedures requirements**

17 2.202. The regulation at WAC 173-303-350 sets forth requirements for
18 contingency plan and emergency procedures requirements.

19 2.203. At the time of the 2000, 2001, and 2002 inspections, Respondent had a
20 Spill Prevention Control and Countermeasures (SPCC) Plan, but did not comply with all
21 of the requirements of WAC 173-303-350.

22 2.204. At the time of the 2000, 2001, and 2002 inspections, Respondent had not
23 complied with contingency plan and emergency procedures requirements in accordance
24 with WAC 173-303-350.

1 **Failure to ship dangerous waste to a designated facility**

2 2.205. The regulation at WAC 173-303-200(1)(a) requires that all dangerous
3 waste shipped off-site be shipped to a designated facility.

4 2.206. At the time of the 2000 inspection, as specified in Count II, Respondent
5 shipped dangerous waste that it had generated to a facility that was not a designated
6 facility as defined at WAC 173-303-040.

7 **Summation of Count III**

8 2.207. Respondent disposed of dangerous waste on the ground and in a surface
9 impoundment; stored dangerous waste in a surface impoundment; stored dangerous waste
10 in containers without a permit or interim status and without complying with conditions for
11 accumulation in containers without a permit or interim status; and operated dangerous
12 waste drip pads without complying with conditions for operating without a permit. For
13 these reasons, Respondent was subject to the requirement to have a permit or interim
14 status. Respondent substantially failed to comply with this requirement since the effective
15 date of the regulation for wood-treating wastes, at least since December 24, 1992, and
16 with multiple dangerous waste requirements as a result of its failure to obtain a permit or
17 interim status, including those requirements specified in Counts IV through VII below.
18 Respondent's failure to comply with these requirements created substantial potential for
19 harm to human health and the environment and to the dangerous waste program, and is a
20 substantial deviation from the requirements. Pursuant to Section 3008(a)(3) and (g) of
21 RCRA, 42 U.S.C. § 6925(a)(3) & (g), as specified in Paragraph 3.1 below, Complainant
22 requests that a penalty of up to \$27,500 be assessed for 180 of the days that Respondent
23 stored and disposed of dangerous waste without a permit or interim status.

24 **COUNT IV: FAILURE TO HAVE A WRITTEN CLOSURE PLAN**

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2.217. Respondent failed to comply with applicable standards set forth in 40 C.F.R. Part 265 that are incorporated by reference into WAC 173-303-400(3).

2.218. The regulation at WAC 173-303-400(3) incorporates by reference, among other regulations, 40 C.F.R. § 265.112.

2.219. The regulation at 40 C.F.R. § 265.112 requires that owners or operators of hazardous waste management facilities have a written closure plan that identifies the steps necessary to perform closure as provided at 40 C.F.R. § 265.112

2.220. At the 2000, 2001, and 2002 inspections, Respondent did not have a written closure plan for its Facility in violation of 40 C.F.R. § 265.112.

2.221. The regulation at WAC 173-303-400(3) incorporates by reference, among other regulations, 40 C.F.R. § 265.118.

2.222. The regulation at 40 C.F.R. § 265.118 requires that owners or operators of a hazardous waste disposal unit must have a written post-closure plan.

2.223. At the 2000, 2001, and 2002 inspections, Respondent did not have a written post-closure plan for its Facility in violation of 40 C.F.R. § 265.112.

2.224. In accordance with EPA’s RCRA Civil Penalty Policy, because this violation stems from the failure of Respondent to have a permit or interim status, EPA is not seeking a separate penalty for this count and instead proposes that the violations in this Count be taken into consideration in assessing a penalty for Count III.

**COUNT V: FAILURE TO HAVE A COST ESTIMATE FOR CLOSURE
AND POST-CLOSURE**

2.225. The allegations of paragraphs 2.1 through 2.224 are incorporated herein by reference.

2.226. The regulation at WAC 173-303-400(3) incorporates by reference, among

1 other regulations, 40 C.F.R. § 265.142.

2 2.227. The regulation at 40 C.F.R. § 265.142 requires that owners or operators of
3 hazardous waste management facilities have a cost estimate for closure.

4 2.228. At the 2000, 2001, and 2002 inspections, Respondent did not have a cost
5 estimate for closure for its Facility in violation of 40 C.F.R. § 265.142.

6 2.229. The regulation at WAC 173-303-400(3) incorporates by reference, among
7 other regulations, 40 C.F.R. § 265.144.

8 2.230. The regulation at 40 C.F.R. § 265.144 requires that owners or operators of
9 hazardous waste management facilities have a cost estimate for post-closure.

10 2.231. At the 2000, 2001, and 2002 inspections, Respondent did not have a cost
11 estimate for post-closure for its Facility in violation of 40 C.F.R. § 265.144.

12 2.232. In accordance with EPA's RCRA Civil Penalty Policy, because this
13 violation stems from the failure of Respondent to have a permit or interim status, EPA is
14 not seeking a separate penalty for this count and instead proposes that the violations in this
15 Count be taken into consideration in assessing a penalty for Count III.

16 **COUNT VI: FAILURE TO HAVE FINANCIAL ASSURANCE FOR CLOSURE**
17 **AND POST CLOSURE**

18 2.233. The allegations of paragraphs 2.1 through 2.232 are incorporated herein by
19 reference.

20 2.234. The regulation at WAC 173-303-400(3) incorporates by reference, among
21 other regulations, 40 C.F.R. § 265.143.

22 2.235. The regulation at 40 C.F.R. § 265.143 requires that owners or operators of
23 hazardous waste management facilities have financial assurance for closure as specified
24 therein.

1 2.236. At the 2000, 2001, and 2002 inspections, Respondent did not have financial
2 assurance for closure for its Facility in violation of 40 C.F.R. § 265.143.

3 2.237. The regulation at 40 C.F.R. § 265.145 requires that owners or operators of
4 hazardous waste management facilities have financial assurance for post-closure as
5 specified therein.

6 2.238. At the 2000, 2001, and 2002 inspections, Respondent did not have financial
7 assurance for post-closure for its Facility in violation of 40 C.F.R. § 265.145.

8 2.239. In accordance with EPA's RCRA Civil Penalty Policy, because this
9 violation stems from the failure of Respondent to have a permit or interim status, EPA is
10 not seeking a separate penalty for this count and instead proposes that the violations in this
11 Count be taken into consideration in assessing a penalty for Count III.

12 **COUNT VII: FAILURE TO HAVE A GROUNDWATER MONITORING**
13 **PROGRAM**

14 2.240. The allegations of paragraphs 2.1 through 2.239 are incorporated herein by
15 reference.

16 2.241. The regulation at WAC 173-303-400(3) incorporates by reference, among
17 other regulations, 40 C.F.R. Part 265, Subpart F.

18 2.242. The regulation at 40 C.F.R. Part 265, Subpart F requires that owners or
19 operators of hazardous waste management surface impoundments and landfills have a
20 groundwater monitoring program in accordance with 40 C.F.R. Part 265, Subpart F.

21 2.243. At the 2000, 2001, and 2002 inspections, Respondent did not have a
22 groundwater monitoring program for its Facility that complies with 40 C.F.R. Part 265,
23 Subpart F, in violation of 40 C.F.R. Part 265, Subpart F.

24 2.244. In accordance with EPA's RCRA Civil Penalty Policy, because this
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1 violation stems from the failure of Respondent to have a permit or interim status, EPA is
2 not seeking a separate penalty for this count and instead proposes that the violations in this
3 Count be taken into consideration in assessing a penalty for Count III.

4 **III. PENALTY**

5 3.1. Pursuant to Sections 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) &
6 (g), and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, any
7 person who violates any of Subtitle C of RCRA, including any violation of an authorized
8 state program, shall be liable to the United States for a civil penalty in an amount not to
9 exceed \$27,500 per day of noncompliance for each violation of a requirement of Subtitle
10 C. The penalty assessed must take in to account the seriousness of the violation and any
11 good faith efforts to comply with applicable requirements. Therefore, Complainant
12 requests that the Administrator, after consideration of the statutory assessment factors,
13 assess a civil penalty against Respondent of up to \$27,500 per day for each day or
14 occurrence that a penalty is sought in Counts I - III.

15 **IV. COMPLIANCE ORDER**

16 4.1. IT IS HEREBY ORDERED that Respondent shall take the following actions
17 within the time periods specified:

18 a. Respondent shall immediately cease disposing of dangerous waste at the
19 Facility;

20 b. Respondent shall immediately cease storage of dangerous waste except in
21 accordance with a permit or the conditions for accumulation of dangerous waste found at
22 WAC 173-303-200, WAC 173-303-675, WAC 173-303-300 through 360, including but
23 not limited to the following conditions:

24 i. In accordance with WAC 173-303-200(1)(b)(iii)(A), Respondent

1 maintains at the facility a description of procedures that will be followed to ensure that all
2 wastes are removed from the drip pad and associated collection system at least once every
3 90 days; and

4 ii. In accordance with WAC 173-303-200(1)(b)(iii)(A), Respondent
5 maintains at the facility documentation of each waste removal, including the quantity of
6 waste removed from the drip pad and the sump or collection system and the date and time
7 of removal;

8 iii. In accordance with WAC 173-303-675(4)(j), Respondent operates and
9 maintains all drip pads in a manner to minimize tracking of hazardous waste or hazardous
10 waste constituents off the drip pad as a result of activities by personnel or equipment;

11 iv. In accordance with WAC 173-303-675(4)(k), after removing treated
12 wood from the treatment vessel, Respondent holds treated wood on the drip pad until
13 drippage has ceased and maintains records sufficient to document that all treated wood is
14 held on the drip pad following treatment until drippage has ceased.

15 v. In accordance with WAC 173-303-675(1)(c), Respondent either
16 complies with the drip pad requirements in the storage yard or maintains and complies
17 with a written contingency plan that describes how Respondent will respond immediately
18 to the discharge of infrequent and incidental drippage. The written contingency plan must
19 describe how Respondent will: (a) clean up the drippage; (b) document the cleanup of the
20 drippage; (c) retain documents regarding the cleanup for three years; and (d) manage the
21 contaminated media in a manner consistent with federal regulations;

22 vi. WAC 173-303-330 (Personnel training);

23 vii. WAC 173-303-340 (Preparedness and prevention);

24 viii. WAC 173-303-350 (Contingency plan and emergency procedures);

1 ix. WAC 173-303-360 (Emergencies); and

2 x. WAC 173-303-380 (Facility record keeping);

3 c. Immediately make dangerous waste determinations in accordance with WAC
4 173-303-070, for all solid waste generated or accumulated by Respondent, including but
5 not limited to solid waste that may be dangerous waste according to WAC 173-303-082 or
6 solid waste that may be contained-in soils, surface water or groundwater, and manage any
7 dangerous waste in accordance with all applicable RCRA requirements;

8 d. Within thirty (30) days after receipt of this Complaint, Respondent shall
9 achieve compliance with all applicable requirements of 40 C.F.R. Part 265 including but
10 not limited to the requirements for: inspections, closure, financial assurance, and
11 groundwater monitoring.

12 e. Within thirty (30) days after receipt of this Complaint, Respondent must submit
13 to EPA and the Washington State Department of Ecology a closure plan and a post closure
14 plan in accordance with 40 C.F.R. Part 265, Subpart G.

15 4.2. All work to be performed pursuant to this Complaint shall be under the
16 direction and supervision of qualified personnel. Respondent shall provide a copy of this
17 Complaint to all contractors, subcontractors, laboratories, and consultants retained to
18 conduct or monitor any portion of the work performed pursuant to this Complaint.
19 Respondent shall provide a copy of this Complaint to any successor(s) in interest prior to
20 any transfer of ownership or operation of the Facility.

21 4.3. Attached to this Complaint is a Certificate of Completion for Respondent,
22 which must be executed by Respondent and returned to EPA at the address set forth in
23 paragraph 4.5 below within fourteen (14) days after full compliance with all of the
24 provisions of this Section.

1 4.4. In accordance with Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and the
2 regulations governing the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19,
3 promulgated pursuant to the Debt Collection Improvement Act of 1996, violation of any
4 portion of this Complaint shall subject Respondent to a civil penalty of up to \$27,500 per
5 day, per violation.

6 4.5. Unless otherwise specified, any communications with EPA regarding this
7 Complaint shall be in writing and directed to:

8 Manager, RCRA Compliance Unit
9 WCM-126
10 U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

11 A copy of each document or other correspondence submitted to EPA pursuant to this
12 Complaint shall be sent to Jennifer G. MacDonald, Assistant Regional Counsel, and
13 Cheryl Williams, RCRA Compliance Officer, at:

14 United States Environmental Protection Agency, Region 10
15 1200 Sixth Avenue
Seattle, WA 98101

16 4.6. All actions required pursuant to this Complaint shall be undertaken in
17 accordance with all applicable local, state, and federal laws and regulations.

18 **V. NOTICE OF OPPORTUNITY FOR HEARING**

19 5.1. Pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), the Complaint
20 shall become final unless Respondent files a written Answer and makes a written request
21 for a public hearing no later than thirty (30) days after service of this Complaint.

22 5.2. A written Answer to the Complaint must satisfy the requirements of 40 C.F.R.
23 § 22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment
24 of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is
25

1 attached hereto. The Answer and request for hearing must be filed with the Regional
2 Hearing Clerk at:

3 U.S. Environmental Protection Agency, Region 10
4 1200 Sixth Avenue
Seattle, WA 98101

5 Copies of all papers filed by Respondent must also be served on Jennifer G. MacDonald,
6 Assistant Regional Counsel at the address in 4.5.

7 5.3. Any Answer Respondent files must: (a) request a hearing of this matter or
8 Respondent's right to a hearing may be deemed waived; (b) contain clear and direct
9 admissions, denials, and/or explanations with respect to each of the factual allegations of
10 the Complaint to which Respondent has any particular knowledge; (c) state the
11 circumstances or arguments which are alleged to constitute the grounds of any defense;
12 the facts which Respondent disputes; and the basis for opposing any proposed relief.

13 5.4. Respondent may request a hearing on any material fact alleged in the
14 complaint, or on the appropriateness of any proposed penalty, or compliance or corrective
15 action order.

16 5.5. Respondent's failure to file a written Answer and request for a hearing within
17 thirty (30) days of service of this Complaint may result in the entry of a default order
18 against Respondent. Default by Respondent constitutes a binding admission of all
19 allegations contained in the Complaint and a waiver of Respondent's right to a hearing.

20 VI. SETTLEMENT CONFERENCE

21 6.1. Whether or not Respondent requests a hearing, an informal conference may
22 be requested in order to discuss the facts of this case in an attempt to arrive at a settlement.
23 To request a settlement conference, Respondent, or if represented by counsel,
24 Respondent's attorney must contact Jennifer G. MacDonald at the address in paragraph
25

1 4.5. or by calling at (206) 553-8311.

2 6.2. A request for a settlement conference does not extend the thirty (30) day-
3 period during which a written Answer and request for a hearing must be submitted. The
4 informal conference procedure may be pursued simultaneously with the adjudicatory
5 hearing procedure.

6 6.3. EPA encourages all parties against whom a civil penalty is proposed to pursue
7 the possibility of settlement through an informal conference. However, no penalty
8 reduction will be made simply because such a conference is held. Such a conference
9 might resolve matters by a settlement, making a hearing unnecessary. Any settlement
10 reached as a result of such conference shall be embodied in a written Consent Agreement
11 and Consent Order.

12 6.4. If Respondent has neither effected a settlement by informal conference nor
13 requested a hearing within the thirty (30) day period allowed by the Complaint, the
14 proposed penalties will be assessed without further proceedings.

15
16 THIS ____ day of _____, 2003.

17
18
19 _____
20 RICHARD ALBRIGHT, Director
21 Office of Waste and Chemicals Management
United States Environmental Protection Agency, Region 10

22
23 _____
24 Jennifer G. MacDonald
25 Assistant Regional Counsel
United States Environmental Protection Agency, Region 10

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION 10**
3 **BEFORE THE ADMINISTRATOR**

4 In the Matter of:)

5 **THE OESER COMPANY**)

CERTIFICATION

6 EPA ID # WAD 00895 7243)

7 Respondent)

EPA Docket No. RCRA-10-2003-0151

8 Proceeding pursuant to Section 3008(a)
9 and (g) of the Resource Conservation and
Recovery Act, 42 U.S.C. § 6928(a) & (g).
_____)

10
11 _____ certifies under penalty of
12 perjury that the following statements are true, accurate and correct:

13 1. I am _____ of the
above-captioned Respondent, The Oeser Company.

14 2. Each and every one of the requirements contained in Section IV of the
15 Complaint and Compliance Order issued on _____ to the above named
Respondent has been fully and timely complied with.

16 EXECUTED this _____ day of _____, 2003.

17
18
19 _____
(signature)

20
21 _____
(print or type name and title)
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Concurrence for the Complaint issued to **The Oeser Company**
Docket No. RCRA-10-2003-0151

CONCURRENCES						
Initials:						
Name:	J. MacDonald	A. Boyd	C. Williams	J.Sikorski		
Date:						